Supreme Court, U.S.
FILED
APR 12 1993
OFFICE OF THE CLERK

No. 92-1898

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1992

ANDREW JOHNSON, JR.
Petitioner,

vs.

CROWN LIFE INSURANCE COMPANY, *et. al*
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

ANDREW JOHNSON
"PRO-SE"
5839 MIMIKA AVENUE
ST. LOUIS, MO 63147
(314) 382-6108

PLAINTIFFS	DEFENDANTS
ANDREW JOHNSON, JR.	ALUMINUM INDUSTRIES, United Steelworkers of America

Jury

ATTORNEYS

Wilson Gray
1259 North Kingshighway
St. Louis, MO 63113
(314) 367-8709

W. Mark Rasmussen
Blumenfeld, Sandweiss, Marx,
Tureen, Ponfil & Kaskowitz
168 N. Meremec, Suite 400
St. Louis, MO 631104
863-0800
Atty. for deft Aluminum Ind.

Jerome A. Diekemper
Diekemper, Hammond, Shinners
Turcotte, Larrew, P.C.
7730 Carondelet, Suite 222
St. Louis MO 63105
727-1015
Atty. for deft United Steelworkers

David D. Crane
Leritz, Reinert, Duree, P.C.
812 North Collins
St. Louis, MO 63102
621-5743
Atty. for deft Crown Life Ins. Co.

QUESTIONS PRESENTED FOR REVIEW

I. Whether Petitioner is entitled to continued health benefits after December 1, 1977 under Crown Life Group Health Insurance policy issued to Pettioner's former employer, Aluminum Industries, Inc.

II. Whether Petitioner is entitled under the policy to a waiver of life insurance premiums after December 1, 1979, and/or the payment to him of monthly benefits until he is able to work again or the payment of $250,000.00 toward his injury or whichever comes first.

III. Was the Petitioner entitled to payment by his insurance company during his lifetime or payment of $250,000.00 whichever comes first.

IV. Was the Petitioner bound to know his policy provisions in order to have sought from the company his rights from the company after he was discharged.

LIST OF PARTIES

A. The following are entities interested in the outcome of this case:

The parties to the proceedings below were the petitioner, Andrew Johnson, Jr., and the respondent, Crown Life Insurance Company, United Steelworkers of America and Aluminum Industries.

B. The following are names of opposing law firms and/or counsel in this case:

Counsel for Respondent, Crown Life, are David D. Crane, Leritz, Reinert, Duree, P.C., 812 North Collins St. Louis, MO 63102.

Counsel for Respondent, United Steelworkers of America, are Jerome A. Diekemper, Diekemper, Hammond, Shinners Turcotte, Larrew, P.C., 7730 Carondelet, Suite 222, St. Louis, MO 63105

Council for Respondent, Aluminum Industries, are W. Mark Rasmussen, Blumenfeld, Sandweiss, Marx, Tureen, Ponfil & Kaskowitz, 168 N. Meremac, Suite 400, St. Louis, MO 63105

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OPINION BELOW

The decision of the U.S. Court of Appeals, the Court carefully reviewed the original file of the U.S. District Court and Ordered that this appeal be dismissed as frivolous rendered on December 24, 1992 (Appendix A).

By order dated February 8, 1993 the U.S. Court of Appeals denied Petitioner's request for rehearing (Appendix B).

The opinion of the U.S. District Court in an Order dated November 25, 1992, Petitioner's request to reopen this case is denied (Appendix C).

JURISDICTION

The Court of Appeals opinion in this matter was filed on September 10, 1992, November 25, 1992 and December 24, 1992.

The courts jurisdiction is invoked under Title 28, U.S.C. Section 1254(1).

CONSTITUTION AND STATUTORY PROVISION INVOLVED

Amendment Four (4) to the United States Constitution is set forth in Appendix.

STATEMENT OF THE CASE

On or about May 2, 1976 and a long time before that the Plaintiff was an employee of Aluminum Industries, Inc. Which company provided group insurance for its employees including a major medical and hospital expenses for any employee injured on the job or off the job.

On May 2, 1976, the Plaintiff was severely injured in an automobile accident, not involving his employment, in which 55% of his body received 2nd and 3rd degree burns and was found by his physician to be unable to engage in any active full time type of work.

Most of his work could be in the order of very light activity with his hands considering the remaining ability of his digits to hold things. Which is extremely limited.

Plaintiff's employment was terminated on December 1, 1976 by the Defendant, Aluminum Industries, Inc., on the theory that he was unable to return to work. The Plaintiff continued to receive medical treatment from his doctors down into 1983 but the bills were refused payment by the insurance company as the plaintiff had been discharged from his employment on December 1, 1976.

REASONS FOR GRANTING THE WRIT

The Plaintiff believes that the insurance policy he had would pay him benefits for life out of the $250,000.00 which ever came first. The plaintiff was discharged after he could not return to work because of his injuries and plaintiff thinks this was an error.

CONCLUSION

Plaintiff, Andrew Johnson, Jr., respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit dismissing Plaintiff's appeal to that court from the U.S. District Court ~~for~~ IN the Eighth Circuit dismissing his suit for damages arising out of an accident received by him while he was employed by Aluminum Industries, Inc., which company's employees were covered under an insurance company policy issued by the respondent, Crown Life Insurance Co.

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APPENDIX A

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 92-3835EMSL

Andrew Johnson, Jr.,

Appellant

vs.

Aluminum Industries, Inc.; United Steelworkers of America,

Appellees.

Appeal from the United States District Court for the Eastern District of Missouri

JUDGMENT

The court has carefully reviewed the original file of the United States District Court and orders that this appeal be dismissed as frivolous.

December 24, 1992

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit.

UNITED STATES COURT OF APPEAL

I Andrew Johnson Jr.

My reason for wanting this case reopened is, I think that this has been a case of lawyers, Consumers and Insurance wrong doing.

I would like to have help from the court in getting this matter straightend out.

My case numbers are:

89-558c(3)

90-1124EM

90-1631EM

5839 Mimika Ave
St. Louis Mo. 63147
(314) 382-6108

APPENDIX B

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 92-3835EMSL

Andrew Johnson, Jr.,

Appeal from the United States

District Court for the

Eastern Division

vs.

Aluminum Industries, Inc., United

Steelworkers of America,

The petition for rehearing by the panel is denied.

February 8, 1993

Order Entered at the Direction of the Court

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX C

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

ANDREW JOHNSON, JR.,

Plaintiff,

vs.

CROWN LIFE INSURANCE CO., et al.,

Defendants.

ORDER

IS HEREBY ORDERED that plaintiff's request to reopen this case is denied.

Dated this 25 day of November, 1992.

GEORGE F. GUNN JR.
UNITED STATES DISTRICT JUDGE

APPENDIX D

EIGHTH CIRCUIT DOCKET SHEET

92-3835

Andrew Johnson, Jr. v. Aluminum Industries, et al

Appeal from: U.S. DISTRICT COURT, EASTERN MISSOURI

civil-private-none PRO SE Filed: 12/15/92 Fee Status: paid

Case Associations

Prior cases:

None

Current cases:

None

Lower Court Information

District:: 0865-4 : 89-558-c(6)GFG

Trial Judge: George F. Gunn, Jr., U.S. District Judge

Date Filed: 3/24/89

Date order/judgment: 11/25/92

Date NOA filed: 11/30/92

Caption

Andrew Johnson, Jr.

Plaintiff-Appellant

v.

Aluminum Industries, Inc. ; United Steelworkers of America

Defendants- Appellees

Counsel Information

Andrew Johnson, Jr.

Plaintiff- Appellant

v.

Aluminum Industries, Inc.

Defendants-Appellees

Docket

12/15/92	Civil Case Docketed. (lkl)
12/15/92	Certified copies notice of appeal, docket entries, [92-3835] and order of 11/25/92 from district court [238747] (lkl)
12/15/92	Briefing Schedule: Court will consider appeal on original file of the District Court. [92-3835] Brief of aplnt due on 1/25/93, Brief of aplee due on 2/23/93, Reply brief due on 3/9/93. (lkl)
12/15/92	Records recieved: Original file, consisting of 1 Vol ume, location STL. [92-3835] (lkl)
12/15/92	Records recieved: Transcript, consisting of 1 volume. (hearing of 11/30/89) Location STL [92-3835] (lkl)
12/17/92	Case Submitted to a panel. [92-3835] (mel)
12/21/92	Appearance for appellee, attorney Jerome A. Diekemper [92-3835] [241824] (sjo)
12/24/92	Judgment: Frank J. Magill, Gerald W. Heaney, C. Arlen Beam. Case Dismissed as frivolous. [92-3835] [242388] (mel)
12/28/92	Petition for rehearing by the panel, filed by Appellant Andrew Johnson w/service to appellee on 1/5/93 by USCA8 [92-3835] (mam)
2/8/93	Judge Order: denying petition for panel rehearing [245523-1] filed by Andrew Johnson Jr. [92-3835] [259546] (ema)
2/19/93	Mandate Issued [92-3835] 9 (mam)

2/19/93	Record sent out of the office to lower court at the end of appellate proceedings. Records Included : Vol1. TR; [92-3835] (mam)
2/19/93	Record sent out of the office to lower court at the end of appellate proceedings. Records Included: 1 vol. TR [92-3835] (mam)
2/24/93	Receipt for mandate. [92-3835] [265866] (mam)

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ANDREW JOHNSON, JR. Plaintiff vs. CROWN LIFE INSURANCE COMPANY et.al Defendants	Cause No. 89-0558-c-3 Division Jury Trial Demanded

ORDER

This matter came on for hearing on November 30, 1989 on the Motion of Defendant Crown Life Insurance Company for summary judgment. The court having heard oral aurgument, having considered the pleadings and other papers filed herein, and being fully advised.

IT IS HEREBY ORDERED that Defendant Crown Life Insurance Company's Motion for Summary Judgment GRANTED.

A memorandum of Decision is filed herewith.

Dated this _____day of_____,1989.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

ANDREW JOHNSON, JR.,		
Plaintiff,	:	No. 89-0558c(3)
CROWN LIFE INSURANCE COMPANY, et al.,		
Defendants.		

ORDER

This matter is before the Court on defendant United Steelworkers of America's ("union") motion for summary judgment on statute of limitations grounds; and defendant Aluminum Industries, Inc.'s ("Aluminum") motion to dismiss plaintiff's complaint for failure to obtain service of process on Aluminum within 120 days of the filing of the complaint, as required by Federal Rule of Civil Procedure 4(j). For the reasons set forth below, both motions are granted, and the case is dismissed. A. United Steelworkers of America

The undisputed facts are as follows: On May 2, 1976, while employed by Aluminum and a member of the union, plaintiff became permanently disabled. Plaintiff's employment was terminated effective December 1, 1976. In July 1979, plaintiff contacted a staff representative of the union concerning problems he was having with his health and life insurance coverage. The union representative contacted the insurance carrier, Crown Life

Insurance Company ("Crown Life") and reviewed the collective bargaining agreement.

On July 16, 1979, the representative informed plaintiff that he did not believe Aluminum had violated the collective bargaining agreement, or that Crown Life had violated the terms of the policies. On March 19, 1982, the representative informed plaintiff that either Aluminum or Crown Life bore the responsibility of notifying plaintiff of any conversion rights existing under the policies. On May 14, 1982, the representative again communicated with plaintiff stating:

> Conclusion: Mr. Johnson, you have constantly stated that the only reason you did not convert your Major Medical Coverage was because you were not knowledgeable of your right to convert. Crown Life's Group Insurance Certificate did not inform you of such rights. But, Mr. Johnson, when you were informed in November 1976 that your insurance would terminate in December 1977, I do not have any communication of verbal statement from you stating that you inquired about this notification of Insurance termination.

On March 11, 1982, plaintiff filed an action against Crown Life, seeking a declaration that he was covered by the insurance policies. The union was not named or served in that suit and that action was dismissed without prejudice on March 25, 1988. The present lawsuit was filed on March 24, 1989, and the union was served August 15, 1989. Count III of plaintiff's complaint states:

Comes the Plaintiff and for his cause of action against United Steelworkers of America, his former labors [sic] union for refusing to do his [sic] duty toward the plaintiff and seeing that he was protected in his rights against his employer to be carried as an

employee until he was able to return to work or seek employment elsewhere or in having him carried as an employee with the group insurance carrier that succeeded Crown Life and such action on the part of the United Steelworkers of America, plaintiffs [sic] labor union was negligence [sic] and damaging to the plaintiff.

Plaintiff's response to the union's motion articulates plaintiff's claims as the union's failure (l) to act on his behalf from the time he was injured until the time he was terminated; (2) to explain to him his conversion rights under the insurance policies; (3) to prevent his termination; and (4) to protect plaintiff by having his insurance continue with Crown Life.

Accordingly, this Court finds that, as a matter of law, plaintiff's complaint pleads a "hybrid § 301/duty of fair representation" claim against Aluminum and the union plaintiff's termination and his insurance coverage problems.

In a hybrid case, the six-month statute of limitations of § lO(b) of the National Labor Relations Act, 29 U.S.C. § 160(b), applies to both the claims against the employer and against the union. DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983). The limitations period under DelCostello accrues when a claimant knew or should have known, through the exercise of reasonable diligence, of the acts constituting the alleged violation. Alcorn v. Burlinaton Northern RR. Co., 878 F,2d 1105 (8th Cir. 1989).

The union argues plaintiff's claim accrued no later than March 11, 1987, upon the filing of the first declaratory

action against Crown Life. Plaintiff does not dispute this. The previous suit was dismissed on March 25, 1988, one year before the present suit was filed. Accordingly, plaintiff's claim against the union, filed twelve years after his termination, nearly ten years after his initial discussion with the union's representative, and two years after the dismissal of his suit against the insurance carrier, is barred by the six-month statute of limitations.

B. Aluminum Industries

On March 24, 1989, plaintiff filed his complaint with this Court. On August 16, 1989, 145 days later, Aluminum was served with a summons and a copy of the complaint. On September 5, 1989, counsel for Aluminum entered an appearance. On September 6, 1989, the Court dismissed plaintiff's complaint without prejudice for failure to obtain service of process within 120 days as required by Federal Rule of Civil Procedure 4(j). On September 28, 1989, the Court vacated its order of September 6, 1989, due to counsel's entry of appearance.

Federal Rule of Civil Procedure 4(j) requires that a

_ within 120 days after the filing of the complaint, and that if service is not obtained the action "shall be dismissed." There is no dispute that the summons and complaint in this case were not served on Aluminum within 120 days.

Defendant Aluminum filed its motion to dismiss on October 6, 1989. When plaintiff did not respond to that motion, on October 30, 1989, the Court entered an order directing plaintiff to respond

to dismiss by November 20, 1989. The order specifically provided that "[f]ailure timely to comply with this order may result in the granting of defendant's motion and the dismissal of this case as to defendant Aluminum Industries, Inc." Plaintiff has filed no response to defendant's motion to dismiss filed on October 6, 1989, or to the Court's order of October 30, 1989. Accordingly, IT IS HEREBY ORDERED that defendant Aluminum Industries, Inc.'s motion to dismiss is granted and Aluminum Industries, Inc. is dismissed from this case for failure to obtain service within 120 days of the filing of the complaint. IT IS HEREBY FURTHER ORDERED that defendant United Steelworkers of America's motion for summary judgment is granted, and plaintiff's claim against defendant United Steelworkers of America is dismissed as barred by the six-month statute of limitations.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ANDREW JOHNSON JR.
plaintiff
vs.
CROWN LIFE INSURANCE COMP.
defendants

cause no. 89-0558-c-3

ANSWER OF DEFENDANT

UNITED STEELWORKERS OF AMERICA

1. Defendant admits paragraph 1.

2. Defendant is without knowledge sufficient to form a beleif as to the truth of paragraph 2.

3. Defendant admits paragraph 3.

4. Defendant admits it is a labor organization and that Disstrict 34 of the United Steelworkers of America has an office at 4025 Seven Hills Drive, St. Louis Missouri. Defendant denies the remaider of paragraph 6.

5. Defendant denies parragraph 5.

6. Defendant admits that plaintiff was employed by Aluminum Industries, Inc. provided insurance benefits to its employees, including plaintiff, but defendant denies that these facts were true "at

all times herein material." Defendant is without knowledge sufficient to admit or deny the truth of the allegations concerning the coverage or details of these benefits.

7. Defendant is without knowledge sufficient to admit or deny the truth of paragraph 7.

8. Defendant is without knowledge sufficient to admit or deny the truth of paragraph 8.

9. Defendant admits plaintiff was injured on May 2, 1976, and was permanently disabled. Defendant is without knowledge to admit or deny the truth of the remainder of paragraph 9.

10. Defendant admits plaintiff did not return to his job at Aluminum Industries, Inc. Defendant is without knowledge sufficient to form a belief as to the truth of the remainder of paragraph 10.

11. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations in paragraphs 11, 12, 13, 14, 15, 16, and 17.

Count II

1. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations in paragraphs 1 and 2.

Count III

1. Defendant denies the allegations in the unnumbered paragraph under Count III.

AFFIRMATIVE DEFENSES

Comes now defendant United Steelworkers of America and states the following defenses to plaintiff's claim against it:

1. Plaintiff's claim is barred by the six-month statute of limitations, made applicable to claims of breach of the duty of fair representation in DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983).

2. Plaintiff fails to state a claim for relief against defendant.

WHEREFORE, defendant contends that plaintiff's claim against it is patently frivolous and untenable and requests the court to dismiss the complaint and to award defendant its costs and attorneys fees, assessing them against plaintiff and his attorney.

DIEKEMPER, HAMMOND, SHINNERS,
TURCOTTE AND LARREW, P.C.
7730 Carondelet, Suite 222
Clayton, Missouri 63105
(314)727-1015

Jerome A Diekemper

Richard P. Perkins

Certificate of Service

The undersigned certifies that a copy of the foregoing was sent by first-class mail to all parties of record on this 5th day of September , 1989.

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ANDREW JOHNSON

Plaintiff,

CROWN LIFE INSURANCE COMPANY, et al.,

Defendants.

Cause No. 89-0558-C-3

MEMORANDUM FOR CLERK

Comes now Jerome A. Diekemper and Diekemper, Hammond, Shinners, Turcotte and Larrew, P.C., to enter their appearance as attorneys for defendant United Steelworkers of America and to file the Answer of defendant Steelworkers to plaintiff's complaint in this cause.

DIEKEMPER, HAMMOND, SHINNERS,
TURCOTTE AND LARREW, P.C.
7730 Carondelet, Suite 222
Clayton, Missouri 63105
(314)727-1015

'Certificate of Service

The undersigned certifies that a copy of the foregoing were sent to counsel for all parties of record by first-class mail on this 5th day of September, 1989.

Wilson Gray
1259 North Kingshighway at Page
St. Louis MO 63113

W. Mark Rasmussen
BLUMENFELD, SANDWEISS, MARX,
TUREEN PONFIL & KASKOWITZ
168 N. Meramec, Suite 400
St. Louis, MO 63104

Jerome A. Diekemper
DIEKEMPER HAMMOND SHINNERS
TURCOTTE & LARREW, P.C.
7730 Carondelet, Suite 222
St. Louis MO 63105

EASTERN DISTRICT OF MISSOURI
OFFICE OF THE CLERK
1114 MARKET STREET
Saint Louis, Missouri
December 7, 1989

RE ANDREW JOHNSON JR. v. CROWN LIFE INSURANCE COMPANY et al
CAUSE NO. 89-558C(3)

Enclosed is a copy of an ORDER entered this date by the Honorable William L. Hungate in the abovestyled cause.
Enclosed is copy of an ORDER and MEMORANDUM entered this date by the Honorable William L. Hungate in the above-styled cause.
Enclosed is a copy of a MEMORANDUM and ORDER entered this date by the Honorable William L. Hungate in the above-styled cause.
Unclosed is a copy of an ORDER of the USCA entered this date in the above-styled cause.
Enclosed is a copy of the mandate of the USCA entered this date in the above-styled cause.

3/24/89	PETITION-ACTION for breach of contract and vexations refusal to pay, fld by pltff 3 counts JURY TRIAL DEMANDED 3 summons issued, 20 days (EOD 3/27/89)
7/28/89	Order (WLH) ORDERED by 8/14/89 pltff shall show good cause why service of summons and complaint was not made upon defts within 120 days after the filing of the complaint. Failure timely to comply with this order or to show good cause will result in dis missal of this case without prejudice. FLD cc:atty for ptlff (EOD7/31/89)
8/14/89	MEMO - Pltff requests alias summons issue on deft Crown Life Insurance co. of Canada Aluminum Industries and Metal Sheet Workers, FLD 3 Alias summons issued 20 days EOD 8/16/89)
8/29/89	RETURN of service on alias summons issued to Crown Life Insurance Co. and returned executed on Pat Weider, for Lewis Melahn, the director of the Missouri Division of Insurance on 8/15/89, fld (EOD 8/30/89)
9/5/89	MEMO - Entry of appearance for deft Aluminum Industries Inc. and request 9/25 to answer etc. to ptlff's

complaint, fld by W. Mark Rasmussen SO ORDERED (WLH)

cc:attys

9/5/89	MEMO - Entry of appearance as attys for deft United Steelworkers of America fld by Jerome A. Diekemper ANSWER TO PTLFF'S COMPLAINT fld by deft United Steelworkers of America (EOD 9/7/89
9/6/89	ORDER (WLH) Ordered this action is dismissed without prejudice as to defts Aluminum Industries Inc. and United Steelworkers of America FLD cc:attys (EOD 9/11/89)
9/7/89	RETURN of service of summons issued to Crown Life Ins. Co. by Division of Insurance State of Mis souri and executed on 8/22/89, fld (EOD 9/11/89
9/19/89	Entry of appearance for deft Crown Life Ins. Co. , Fld by David D. Crane (EOD 9/20)
9/21/89	Motion for summary judgment w/memorandum in support and exs. 1-11 attached, fld by deft Crown Life Ins. Co. (EOD 9/22/89) (Ref: 11/30/89)
9/28/89	Order (WLH) ordered the 9/6/89 order is vacated. Further by 10/6/89 deft Aluminum Industries Inc. shall file its answer or other pleading responsive to the complaint. FLD cc:attys (EOD 9/29/89)

10/6/89	MOTION to dismiss w/Brief in support Fld. by Def. Aluminum Ind. Inc. (EOD 10/10/89) (REF:12/7/89)
10/11/89	MOTION in opposition to def motion for summary judgement w/affidavit attached. fld by pltff. (EOD 9/29/89)
10/18/89	MOTION for summary judgment with memo, affida vit of Phillip Binion and attachment in support thereof fld. by Deft. United Steelworker of America. (REF:12/7/89) (EOD 10/19/89 DRG)
10/23/89	MOTION to dismiss etc., fld. by deft. Aluminum Ind. Inc., 10/6/89 & submitted to Judge Hungate.
10/27/89	MOTION for s/J fld. by deft. Crown Life Ins. Comp. 9/21/89 & submitted to Judge Hungate.
12/28/89	NOTICE of appeal, fld by pltff. Appealing the Court dismissal of defts Crown Life Ins. Co. on 11/30/89; deft United Steelworkers of America and deft Alumi num Industries Inc. on 12/7/89. Fee Paid. (EOD1/2/90)
1/9/90	DELIVERED to U.S.C.A. 2 certified copies of Notice of appeal, 2 certified copies of Clerk's Docket entries, NOA Supplement, 11/30/89 and 2 copies of ORDER (WLH) fld. 12/7/89. cc: Notice of appeal to Judge

Hungate. and Ct. Reporter J. Boswell. cc: Notice of appeal, Clerk's Docket entries and U.S.C.A. letter of 10/19/84 to attorneys of record. (EOD 1/9/90 MEF)

1/11/90 MOTION for sanctions under FRCP 11 w/memo in support etc. fld. by deft. United Steelworkers of America, 12/18/89 & submitted to Judge Hungate.

1/24/90 BRIEFING SCHEDULE (USCA) Assigning #90-1124EM to this appeal. Method of Appendi Prepare tion Notification to attys. Transcript due 3/5/90. cc:by USCA (EOD 1/25/

2/12/90 DESIGNATION for additional record on appeal, fld. by deft (EOD 2/13/90)

2/26/90 ORDER (USCA) ORDERED motion of appealent to dismiss United Steelworkers of America and Aluminum Industries Inc. are dismissed as parties in this appeal. Fld cc:attys and Judge Hungate.

3/26/90 ORDER (WLH) ORDERED deft's union's motion for sanctions is granted. FURTHER pltf counsel Wilson Gray is directed to pay deft union's counsel $1,000.00 as sanctions for bringing a frivolous action against deft union. FLD cc:attys (EOD 3/28/90)

4/2/90	MOTION to compel pltff to supplement his record on appeal w/attachments, fld by deft Crown Life (REF 4/2/90)
	ORDER (WLH) ORDERED deft Crown Life Ins. Co.'s motion to compel is granted. Fld cc:attys (EOD 4/4/90)
4/4/90	NOTICE of appeal fld by pltff. Appealing order entered 3/26/90. Fee paid. (EOD 4/5/90)
4/6/90	DELIVERED to USCA: 2 crtfd copies of NOA and dkt entries; 2 copies of Order of 3/26/90, 1 copy of NOA Supplement and Docket Fee Notification forms. (pc:NOA to Judge Hungate and J Boswell, ct rptr; ct rptr; NOA, dkt entries and 10/19/84 USCA ltr to attys EOD 4/6/90
4/23/90	CONSOLIDATED briefing schedule (U.S.C.A>) assigning no. 90-1631EM to this appeal and council dated with case no. 90-1124EM. Transcript due 5/4/ 90. copy fld. cc:by U.S.C.A (EOD 4/23/90
4/23/90	TRANSCRIPT of oral argument on motion before the Honorable William L. Hungate. Held 11/30/89 and fld by Joan Boswell Audio Operator
4/24/90	The above transcript transmitted to U.S.C.A. (EOD 4/ 23/90)

10/30/89	ORDER (WLH) ORDERED that on or before 11/20/89, pltff shall file his response siting argument and authority in support of his position on the pending motion. Failure timely to comply with this order may result in the granting of defts motion and the dismissal of this case as to deft Aluminum Ind. Inc. Fld cc:atys (EOD 10/311/89 br)
11/1/89	ORDER (WLH) ORDERED that on Thursday, 11/30/89 at 10:00am the court will hear a brief oral argument, not to exceed ten minutes per side on deft. Crown Life Insurance Company's motion for summary judgment, fld 9/22/89. FURTHER ORDERED that on or before 11/21/89 each side shall file a proposed order and memorandum (citing argument and authority) fuling the motion as the party deems appropriate. fld cc:attys (EOD 11/2/89 DRG)
11/3/89	MOTION for Summary Judgement etc. fld. by deft United Steelworkers of America 10/18/89 submitted to Judge Hungate
11/20/89	RESPONSE to deft United Steelworkers of America's motion for summary judgement fld by ptlff (EOD 11/21/89)
11/21/89	MOTION to exceed page limitation of local rule 32

re:deft's motion for summary judgement filed 9/21/89, fld by deft Crown Life Ins. Co. (REF 12/4/89)

11/21/89 MEMO-Deft Crown Life Ins. Co. files is proposed Order and Memorandum

11/30/89 REPLY to response of plaintiff, fld by deft United Steelworkers of America

11/30/89 HEARING (WLH) Parties present for hearing on deft Crown Life Ins. Co's motion for summary judgement fld 9/22/89 heard, argued and deft Crown Life Ins. Co.'s motion for summary judgement will be granted. Fld (EOD 12/1/89)

11/30/89 Motion for summary judgement fld by dft Crown Life 9/21/89 & resubmitted to Judge Hungate.

11/30/89 Motion to exceed page limitation of local rule 32 etc. fld by deft Crown Life Ins. 11/21/89 & submitted to Judge Hungate.

11/30/89 ORDER AND MEMORANDUM (WLH) ORDERED defendant Crown Life Insurance Company's motion for summary judgement is granted. FLD cc:attys (EOD 12/1/89)

12/4/89 MOTION to exceed page limitation fld by deft Crown Life 11/21/89, Granted (WLH) cc:attys (EOD 12/6/89)

12/7/89	ORDER (WLH) ORDERED deft Aluminum Industries Inc's motion to dismiss is granted and Aluminum Industries Inc. is dismissed from this case for failure to obtain service within 120 days of the filing of the complaint. FURTHER deft United Steelworkers of America's motion for summary judgment is granted and pflff's claim against deft United Steelworkers of America is dismissed as barred by the six-month statue of limitations. Fld cc:attys (EOD 12/12/89)
12/18/89	MOTION for sanctions under FRCP 11 w/memorandum in support and affidavit of Jerome A. Diekemper and exs. A-G attached, fld by deft United Steelworkers of America (EOD 12/19/89)(Ref:3/26/90)
7/6/90	ORDER (USCA) copy fld..motion of Crown Life Ins. Co. to strike appellants brief is denied as moot ...cc:by USCA (EOD 7/10/90)
7/30/90	MANDATE (USCA) It is hereby ordered the appeal are dismissed for failure to comply w/the rules of this court. Further the motion of Crown Life Ins. Co. to strike appellant's brief is denied as moot. Fld cc:attys and Judge Hungate 2 vols transcript returned by USCA (EOD 8/1/90)

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
ANDREW JOHNSON, JR.,
Plaintiff
—vs—
CROWN LIFE INSURANCE COMPANY, et al
Defendants .
EASTERN DIVISION
Cause No 89-0558-C-3
Division
Jury Trial Demanded

MEMORANDUM

This matter is before the Court on Defendant Crown Life Insurance Company's Motion for Summary Judgement. For reasons stated below

I. BACKGROUND

The case pending before this Court was preceded by an original action filed by Andrew Johnson, Jr. (Plaintiff) against Crown Life Insurance Company (Crown Life for declaratory judgement and for benefits allegedly due plaintiff under an insured employee benefit plan governed by the Employee Retirement Income Security Act of 1974. 29 USC 1001 at Sec. (ERISA). This earlier action styled Andrew Johnson Vs. Crown Life Insurance, Cause No. 87-436-c(A) was dismissed without prejudice on the eve of trial, March 25, 1988.

On March 24, 1989 Plaintiff filed the pending action naming as Defendants Crown Life, and his former employer, Aluminum Industries, Inc. (Policy Holder) and United Steelworkers of America as Defendants. Only count I is directed against Crown Life.

The issues presented are whether plaintiff is entitled to continued health benefits after December 1 1987, under Crown Life's group health insurance policy issued to Plaintiffs former employer, Aluminum Industries Inc. (the Policy) and whether Plaintiffs is entitled under the Policy to a waiver of life insurance premiums after December 1, 1979.

Prior to December 1 1976, Plaintiff was employed at Aluminum Industries, Inc. and was and insured under the policy. the dues for the policy were paid by Plaintiffs employer. Plaintiff was injured in a non-work related injury on May 2 , 1976. Because he was unable to return to work, Plaintiffs employment was terminated on December 1, 1976. The dues required by the policy were discontinued the same date. Subsequently, Plaintiff incurred additional medical expenses as a result of the same injuries. Crown Life notified Plaintiff of the option to convert the life and/or health overages under the policy to individual policies of insurance upon application and by paying a specified premium. Plaintiff neither submitted an application nor paid premiums to Crown Life as required by the policy to convert either the life benefit or health overages to individual waiver provision of the Policy, Plaintiff received a waiver of life

insurance premiums for the period from December 1, 1977 to December 1, 1979. Crown Life, pursuant to the terms of the Policy, refuses to pay expenses incurred after December 1, 1977 or to grant Plaintiff a waiver of life insurance premiums after December 1, 1979.

Plaintiff contends that he is, entitled to every benefit defined by the Policy because he became disabled while he was a member of the class of employees of the Policyholder eligible for insurance and because he was not aware of his privilege or corresponding obligation to convert the hospital and surgical benefits of the Policy to an individual policy of insurance.

II. THE CONTRACTUAL PROVISIONS

Crown Life attaches to its motion 11 Exhibits and Appendix A, as follows:

1. The affidavit of its senior manager of benefits.
2. Relevant provisions of the Policy.
3. Pages from the deposition transcript of Andrew Johnson.
4. November 17, 1976 termination of employment letter to Plaintiff all notification that his major medical benefits would continue for one year until December 1, 1977.

5-11. Correspondence from June 1979 to January 1981 from Crown Life to Plaintiff.

Appendix A. Group certificate and group insurance ?policy i.e., the Policy.

III. APPLICATION OF THE CONTRACT: The pertinent terms of Crown Life's Policy provides:

TERMINATION OF EMPLOYEE INSURANCE

An employee's insurance under this policy shall terminate as provided under the provision INDICATE Employees STATUS, on the earliest of:

The date he ceases to be employed as defined under Definitions or the date he ceased to be a member in the class of employees of the employer who are eligible for insurance under the BENEFIT SCHEDULE . . . .

HEALTH CONVERSION PRIVILEGE

An eligible individual who wishes to convert to an individual policy of health insurance must submit a written application to crown Life and pay the first quarterly, semi-annual or annual premium in full by the end of the thirty-one day period following the date his benefits terminate.

* * * * * * *

HEALTH CONVERSION

Provided such individual has been continually insured under this policy * * * for the benefits listed below * * ~ he may convert his coverage as follows:

TERMINATED BENEFITS

CONVERSION

COVERAGE AVAILABLE

HOSPITAL & SURGICAL

LIFE PREMIUM WAIVER

If an employee * * * becomes totally disabled * * the employees [life] insurance will be continued under this waiver (subject to the terms of the

BEST AVAILABL

provision Cessation of Insurance Under This Waiver), without payment of premiums from the commencement and during the uninterrupted continuance of total disability,

1. For a period of one year commencing on the first day of total disability provided that written proof satisfactory to Crown Life of such total disability is received at the Home Office of Crown Life within such one year period, and

2. For further successive periods of one (l) year each, provided that written proof satisfactory to Crown Life of the uninterrupted continuance of the total disability of such employee is received at the Home Office of Crown Life within the three (3) months immediately preceding the first day of each such one (l) year period. * * *

CESSATION OF INSURANCE UNDER THIS WAIVER: The insurance continued under this waiver for an employee shall cease on the earliest of:

The last day on which he is totally disabled,

The date he ceased to provide written proof satisfactory to Crown Life, as required of the uninterrupted continuance of his total disability.

CONVERSATION

An Employee whose life insurance under this waiver ceases may be eligible to have such insurance converted by Crown Life to individual life insurance in accordance with the provisions of the life CONVERSION PRIVILEGE of this benefit as if his employment had terminated on the date his insurance under this waiver ceased.

E COPY

LIFE CONVERSION PRIVILEGE: Employee Eligible for Conversion Privilege

• • • • • • • • • • •

An employee who is insured for this benefit shall be eligible to convert his insurance under this benefit to individual life insurance if his insurance under this benefit terminates due to:

1. Termination of his employment .....

CONDITIONS FOR CONVERSION:

An employee who is eligible for this privilege and who wishes to continue his Insurance under this benefit to individual life insurance~ may do so provided that a written application for such individual life insurance is received by Crown Life and the first premium is paid in full by the end of the thirty-one (31) day period immediately following the date the employee's insurance under this benefit terminates.

• • • • • • • • • •

that his total disability benefits would stop at the end of one year on December 1, 1977 (Exhibit 1). Plaintiff so admitted in his deposition. Thus, because Plaintiff did not avail himself of his rights under the Policy, he is precluded from now claiming a right to continued health benefits. Robin vs. Blue Cross Hospital Service, Inc., 637 s.w.2d 695 (Mo. banc 1982).

The group policies in both Robin, supra, and Ihe instant case provide that health benefits do not extend beyond the life of the contract — unless the insured is totally disabled when terminated from employment — in which case, coverage arising from the disability will be extended, as it was for Plaintiff, for a one time maximum period of twelve months. The Policy does not permit the major medical benefit to be converted to an individual policy of insurance.

During his employment, Plaintiff received a $5,000.00 life insurance benefit under the policy. Although Plaintiff could have converted the life insurance benefit to an individual life insurance policy upon termination of his employment, Plaintiff admits in his depositon that he did not do so.

Plaintiff received a waiver of life insurance premiums for two years from December 1, 1977. The foregoing ~provision relating to the life premium wavier benefit unambiguously provides that if an individual becomes totally disabled, his insurance will continue without payment of premiums for a period of one year, and, "for further successive periods of one year

each, provided that written proof satisfactory to Crown Life of the uninterrupted continuance of the total disability is received

Plaintiff's attending physician reported in May 1979 and again in May 1980 that Plaintiff was last seen for a checkup on April 29, 1979 and that Plaintiff's condition had improved and that his disability was indefinite-. Thereafter, Plaintiff did not provide Crown Life with any later attending physician's reports or any other written proof of the uninterrupted continuance of his disability.

Plaintiff is precluded from claiming that he is entitled to the life premium waiver benefit because he failed to satisfy the condition precedent of the proof requirements of the life premium waiver benefit by not providing written proof of the uninterrupted continuance of any disability. Frisella vs. Reserve Life Insurance Company of Dallas, 583 S.w.2d 728 (Mo.

App. 1979). Plaintiff is now barred from claiming a right to either the life premium benefit or to an individual life insurance policy because he failed to, exercise his corLverslon right for individual insurance coverage and paid no dues. Robin vs. Blue Cross Hospital service, Inc., 637 S.W.2d 695 (Mo. Banc. 1982).

Crown Life's Motion for Summary Judgment is granted on all issues.

APPENDIX I

Filed
Nov 5th, 1992
238747
U.S. DISTRICT COURT
E. DISTRICT OF MO.
No. 89-0558c(6)

Andrew Johnson Jr.

vs.

Crown Life Ins.

United States District Court
Eastern District of Missouri
Nov 30, 1992

Notice of Appeal 12/11/92

We Appeal the order of 11/25/92, denying plaintiff's request to open this case.

APPENDIX J

IN THE UNITED STATES DISTRICT

FOR THE EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

ANDREW JOHNSON, JR.

vs.

CROWN LIFE INSURANCE COMPANY
A CORPORATION OF TORONTO CANADA
Local office 1010 Colllingwood Drive

St. Louis, Missouri 63132

and

ALUMINUM INDUSTRIES ,INC.
1611 Des Peres Road

St. Louis, Missouri 63132

and

UNITED STEELWORKERS OF AMERICA
4025 seven Hills Drive

Florissant, Missouri 63133

PETITION ACTION AGAINST INSURANCE COMPANY

FOR BREACH OF CONTRACT AND VEXATIONS

REFUSAL TO PAY

ALUMINUM INDUSTRIES, INC. A CORPORATION

COUNT 1

Comes now plaintiff, and for his course of action against Defendants states to the court that:

1. Plaintiff is a resident of the County of St. Louis, State of Missouri.

2. Defendant, Crown Life Insurance Company is a foreign corporation doing business in the State of Missouri with a local office at 1010 Collingwood Drive, St. Louis Missouri.

3. Defendant, Aluminum Industries, Inc. is a corporation doing business in the State of Missouri with an office at 1611 Des Peres Road, St. Louis Missouri.

4. Defendant, United Steelworkers of America is an international labor organization doing business in the State of Missouri with an office address at 4025 Seven Hills Drive, St. Louis Missouri.

5. The matter in controversy exceeds, exclusive interest and costs, the sum of 10,000.00.

6. That at all times herein material the Plaintiff was gainfully employed by Aluminum Industries, Inc. which company carried a group and master policy of insurance on its employees, particularly Andrew Johnson, which provided a maximum program benefit for major medical expenses up to $250,000.00 and a life insurance policy of $5,000.00 under its group policy No. 319886, Certificate No. 4, with major medical life time limits.

7. That said policy was issued to the Plaintiff through Aluminum Industries, Inc. by Crown Life Insurance Company.

8. That at all times mentioned herein, the above mentioned policies of insurance were in full benefit and effect.

9. On May 2, 1976, Plaintiff was severely injured in an automobile accident, and severely and critically burned on most of his body which required extensive medical treatment, and as a result of such injury he was permanently disabled.

10. That as a result of Plaintiff injuries, he was not able to return to work on his job at Aluminum Industries Inc., and as he was never physically able to return to his job, he was furloughed and had not been able to work since. He is now 58 years of age, and was 46 when he was injured.

11. That Plaintiff took treatment from his doctor from the date of his injury May 2, 1976, on a regular basis to April 22, 1983, and is yet in great need of medical attention, but the defendant Crown Life Insurance Company, has refused to pay any further expenses.

12. That defendant Crown Life Insurance Company provided life, health and medical insurance to plaintiff at all times herein mentioned, pursuant to the group policy issued to Aluminum Industries Inc. No. 319886, Certificate No. 4 with major medical lifetime limits.

13. That at all times mentioned herein, the above said policies of insurance were in full coverage.

14. That defendant has refused payment of medical expenses relating to the above said injuries which Plaintiff has incurred to date on the ground that coverage for such sums does not exist as plaintiff's insurance has been terminated, and therefore, defendant continued to deny coverage for said expenses.

15. That plaintiff has incurred and will continue to incur in the future additional medical expenses related to the above-said injuries.

16. That defendant wrongfully terminated the above said group & life insurance policies issued to Plaintiff after, it had full knowledge of plaintiffs injuries, both from medical statements, that he was unable to work and through the knowledge of Aluminum Industries Inc. plaintiff's employer, that plaintiff did not refuse to work, but was physically unable to work because of his injuries.

17. That the defendant Crown Life Insurance Company, with full knowledge of the seriousness of Plaintiffs injuries from the medical reports submitted and with his personal knowledge of plaintiff's condition from interviews, did not inform plaintiff that he must

that he must continue to pay his weekly of monthly premium if that was the case nor did the company send to the plaintiff the conversation forms with directions of how to complete them nor inform the plaintiff if he did not fill out the papers that the company was terminating the group policy with plaintiffs employer and advising him what general steps he must take in order to protect his insurance rights with the defendants insurance company, And that such neglect was negligent and cause the plaintiff to suffer from his injuries-without proper medical attention to this date and he will continue to suffer in the future. That the defendant owed him the duty to provide medical coverage up to $250,000.00 in value which defendant refused to do.

Wherefore, plaintiff prays judgement against the defendants insurance company for the sum of $200,000.00 to cover plaintiff's past suffering for lack of medical attention and for his future coverage and for his costs here and expended.

COUNT 11

1. Comes the plaintiff and for his cause of action in Count 11 against the Aluminum Industries Inc. his former employer for wrongfully discharged him at a time when he could not work and knowing through medical reports and conferences with the plaintiff that he could not return to work at the time he was discharged because of his injuries.

2. That although plaintiffs injuries and sufferings were not work related, nevertheless the employer did not use that as a means of discharging him and continued to carry him on their payroll as an employee, until at such time the insurance company no longer represented the defendants employees and the plaintiff was unable

to return to work and was then wrongfully discharged by his employer. As a new insurance company was taking over defendants employees and the plaintiff would have to be paid by defendant, Crown Life Insurance Company.

Wherefore, Plaintiff prays judgement against the defendant Aluminum Industries Inc., his former employer in the sum of $200,000.00 and his costs.

COUNT 111

Comes the Plaintiff and for his cause of action against United Steelworkers of America, his former labors union for refusing to do his duty toward the plaintiff and seeing that he was protected in his rights against his employer to be carried as an employee until he was able to return to work or seek employment elsewhere or in having him carried as an employee with the group insurance carrier that seceded Crown Life and such action on the part of the United Steelworkers of America, plaintiffs labor union was negligence and damaging to the plaintiff.

Wherefore, plaintiff prays judgement against the United Steelworkers of America AFL &CIO in the sum of $200,000.00 and the cost of this proceeding.

WILSON GRAY
Attorney for Plaintiff
1259 North Kingshighway at Page
(314) 367-8709